

United States District Court
For the Northern District of California

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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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DREAMSTIME.COM, LLC, a Florida LLC,

No. C 18-01910 WHA

Plaintiff,

v.

16 GOOGLE, LLC, a Delaware LLC; and DOES
17 1-10,

Defendants.

18 **REQUEST FOR FURTHER
19 BRIEFING**

20 Defendant Google has moved under Rule 12(c) for partial final judgment on the
21 pleadings. The substantive issues raised are twofold. *First*, Google argues that Dreamstime's
22 claims may not encompass allegations about the content or arrangement of Google's search
23 results. *Second*, Google argues that Dreamstime is limited to certain damages on its contract
24 claim and not the full breadth of damages Dreamstime's amended complaint has sought.
25 Importantly, not one of Dreamstime's claims would be completely dismissed were Google's
26 motion to be granted in full.

27 This implicates a threshold procedural question. Does Rule 12(c) permit the entry of
28 "judgment" when relief under the motion would not see any claim completely dismissed?

Our court of appeals has not opined on whether Rule 12(c) so permits, but one United
States Court of Appeals decision has. That opinion casts some doubt (in dicta) that "judgment"
under Rule 12(c) can be entered on only part of a claim or defense. *See BBL, Inc. v. City of
Angola*, 809 F.3d 317, 324–325 (7th Cir. 2015).

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1 Furthermore, in a recent opinion, Judge Gary Feinerman considered the matter in depth
2 and concluded that Rule 12(c) cannot be wielded to enter “judgment” on part of a claim or
3 defense. The district court decisions have not aligned. Yet, Judge Feinerman recognized this
4 disagreement, collected all the decisions to have considered the issue, and found that most had
5 concluded as he did. *Kenall Mfg. Co. v. Cooper Lighting, LLC*, 354 F. Supp. 3d 877, 896 (N.D.
6 Ill. 2018); *see also Does I through III v. District of Columbia*, 238 F. Supp. 2d 212, 221 n.9
7 (D.D.C. 2002) (Judge Henry Kennedy) recognizing disagreement between *In re Amica, Inc.*,
8 130 B.R. 792, 796 (Bankr.N.D.Ill. 1991) (Bankr. Judge Jack Schmetterer) and *Chi-Mil Corp. v.*
9 *Grant Co.*, 70 F.R.D. 352, 357 (E.D. Wis. 1976), *amended on other grounds*, 422 F. Supp. 46
10 (E.D. Wis. 1976) (Chief Judge John Reynolds).

11 Some of the decisions which had denied Rule 12(c) motions on this procedural ground
12 considered issues similar to those raised by Google’s motion. *See, e.g., In re NCAA*
13 *Grant-in-Aid Cap Antitrust Litig.*, 2016 WL 4154855, at *2 (N.D. Cal. Aug. 5, 2016) (Judge
14 Claudia Wilken). Of note, a line of decisions have construed different theories under a single
15 claim as separate claims. These decisions have allowed for the Rule 12(c) motion even though
16 the entire claim would not be dismissed. *See, e.g., Holloway v. Best Buy Co., Inc.*, 2009 WL
17 1533668 (N.D. Cal. May 28, 2009) (Judge Phyllis Hamilton).

18 In light of the foregoing, before reaching the merits of Google’s motion, the threshold
19 question presented herein requires consideration. By **MAY 21** at **NOON**, both parties shall
20 please file further briefing on this threshold question. Any other decisions or logic not
21 considered by the aforementioned opinions should be included. This supplemental briefing is
22 limited to five pages. No footnotes, declarations, or attachments are allowed.

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24 **IT IS SO ORDERED.**

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26 Dated: May 15, 2019.

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WILLIAM ALSUE
UNITED STATES DISTRICT JUDGE